

CONTRACT FOR PUBLIC DEFENDER INDIGENT DEFENSE SERVICES

Joely O'Rourke (hereinafter referred to as "Public Defender for the Day" or "PDFD") and LEWIS COUNTY ("COUNTY") (collectively "Parties"), agree to the terms and conditions attached hereto and incorporated herein by this reference ("Agreement").

The term of this Agreement shall commence on the approval date set forth below.

By signing this Agreement, PDFD expressly acknowledges that the indemnification provisions set forth in Paragraphs 3.6 and 5.6 have been mutually negotiated by the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this_____ day of November, 2014.

PUBLIC DEFENDER FOR THE DAY:

Joely O'Rourke

Mailing Address:
PO BOX 869
Chehalis, WA 98532

LEWIS COUNTY:

F. Lee Grose, Chairman

Approved as to Form:
Jonathan L. Meyer, Prosecuting Attorney

By: _____
Deputy Prosecuting Attorney

CONTRACT FOR PUBLIC DEFENDER FOR THE DAY IN LEWIS COUNTY SUPERIOR AND DISTRICT COURTS

1. PARTIES

1.1 This Agreement is entered into effective on the date that is written below, between Lewis County, Washington, a political subdivision of the State of Washington acting by and through the Board of County Commissioners, its elected legislative and executive branch, or their designee ("County"), and Attorney Joely O'Rourke, Public Defender For the Day ("PDFD"). PDFD certifies that she is a duly qualified and licensed member in good standing of the Washington State Bar Association authorized to practice law in the State of Washington, having paid all dues and fees required. The Washington State Bar Association identification number for the PDFD is affixed next to her signature. The purpose of this Agreement is to provide legal counsel to persons charged with crimes in the Superior and District Courts of Lewis County at the time of and solely for the purpose of their preliminary appearance in either court. This Agreement is personal to the PDFD named herein. The PDFD named herein may not sub-contract her duties under this Agreement except that she may contract with qualified attorneys to stand in for her on a limited basis, e.g. when she is sick on vacation or caring for a family member, on such basis as approved by the applicable court.

1.2 By entering into this Agreement, PDFD agrees to abide by the terms and conditions stated in this Agreement, as well as the provisions of the LEWIS COUNTY INDIGENT DEFENSE STANDARDS, the CONDITIONS OF ASSIGNMENT OF DUTIES for Superior Court, and CONDITIONS OF DESIGNATION of District Court, copies of which are provided herewith.

2. DUTIES

2.1 The PDFD shall meet daily in the Lewis County Jail with persons charged with committing criminal offenses who are being held in custody and who have not made their first or preliminary appearance in court on that new charge. She shall ensure that said incarcerated defendants are made aware of the nature of the charges against them, their legal and constitutional rights, and the procedure that the court will follow at the preliminary appearance. She shall additionally discuss with them factors applicable to effectuating their release from custody. Said PDFD will make clear that her representation of said persons is limited to that first appearance and that if they wish to have an attorney to represent them from that hearing forward that they will need to retain private counsel or request the court to appoint a Public Defender (PD) to represent them. The PDFD will additionally advise said incarcerated defendants that they do not have to accept her representation but may choose to retain their own private attorney or may represent themselves at such preliminary or first appearance.

2.2 The PDFD will meet daily in the Superior and District Courts with persons charged with committing criminal offenses who have been released after being arrested and have been ordered to appear for their preliminary or first appearance in court on that new charge. She shall ensure that said defendants are made aware of the nature of the charges against them, their legal and constitutional rights, and the procedure that the court will follow at the preliminary appearance. She shall additionally discuss with them factors applicable to continuing their

release from custody. Said PDFD will make clear that her representation of said persons is limited to that first appearance and that if they wish to have an attorney to represent them from that hearing forward that they will need to retain private counsel or request the court to appoint a Public Defender (PD) to represent them. The PDFD will additionally advise such defendants that they do not have to accept her representation but may choose to retain their own private attorney or may represent themselves at such preliminary or first appearance.

2.3 The PDFD will appear daily at every scheduled preliminary or first appearance in both the Superior and District Courts of Lewis County and will, with the consent of each defendant who desires her assistance, speak for that defendant during such preliminary or first appearance, and for any persons arrested on warrants who do not have legal counsel even though it may not be a preliminary appearance. The intent of the parties is that the PDFD will provide legal advice and assistance to any person appearing in court who does not have legal counsel available until legal counsel, either privately or publicly funded, can appear to assist them, provided the person desires the assistance and consents to the same.

2.4 The PDFD may make arrangements with a covering attorney or attorneys who will provide the services specified in this Agreement for temporary periods when the PDFD is unavailable. The PDFD shall ensure that such other attorneys are acceptable and pre-approved by the Presiding Judges of both the District and Superior Courts before the covering attorneys provide services. The PDFD shall be solely responsible to provide remuneration to any covering attorney.

2.5. The PDFD shall review requests for appointment of Public Defenders in the Superior Court and oversee the public defenders on contract with the County.

3. COMPENSATION

3.1. The PDFD will be compensated at a flat rate of \$8,275.00 per month based on an hourly rate of \$75.00 per hour for 25 hours a week. The PDFD compensation will be, based upon the PDFD being available 25 hours a week from Noon to 5:00 p.m. non-court holiday weekdays daily, and 2 hours per month for reviewing Superior Court requests for appointment of Public Defenders and overseeing the public defenders on contract with the County. (See 3.2 below.) The 25 hour per week time segment is to be allocated between District Court (15 hours a week) and Superior Court (10 hours per week).

3.2 The County shall tender payment for services rendered pursuant to Section 3.1 to the PDFD within thirty (30) days of receiving a reimbursement claims voucher that meets the requirements of this Agreement and applicable law. The Clerk of the Board of County Commissioners, on behalf of the COUNTY, shall remit to the PDFD a warrant for the approved reimbursement amount.

3.4 The PDFD services shall be furnished as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and

performed pursuant to this Agreement by the PDFD as an independent contractor. The PDFD acknowledges that the entire compensation for this Agreement is specified in Section 3.1 and that the PDFD is not entitled to any County benefits including, but not limited to: retirement pay, vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits or any other rights or privileges afforded to Lewis County employees.

3.5 The PDFD shall at all times maintain in full force and effect her own malpractice insurance.

3.6 The performance of all or part of this Agreement by the PDFD shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the PDFD or of any employee of the PDFD at the present time or in the future.

3.7 The PDFD understands and acknowledges that the County will not withhold federal or state income taxes. Where required by State or Federal law, the PDFD authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the PDFD will be reported to the Internal Revenue Service (IRS) at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the PDFD to make the necessary estimated tax payments throughout the year, if any, and the PDFD is solely liable for any tax obligation arising from the PDFD's performance of this Agreement. The PDFD hereby agrees to indemnify the County against any demands to pay taxes arising from the PDFD's failure to pay taxes on compensation earned under this Agreement.

4. INSURANCE

4.1 The PDFD is liable for her actions and those of her employees and subcontractors or covering attorneys in performing services related to this Agreement. The PDFD shall obtain and keep in force and provide proof to the County Human Resources Administrator throughout the term of this Agreement that she has purchased and is maintaining adequate professional liability insurance with a company approved by the Washington State Insurance Commissioner. The PDFD shall provide a standard certificate of insurance reflecting such current coverage to the Human Resources Administrator at the time this Agreement is executed, and thereafter on an annual basis during the term of the Agreement. Further, the policy will be a claims made occurrence-based policy. Failure to provide evidence of current insurance shall be grounds for termination of the Agreement.

4.2 The amount of coverage will be not less than a single limit of \$250,000 per occurrence, with an aggregate of at least \$500,000.

4.3 The PDFD shall obtain and maintain in force at all times Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. ATTORNEY STANDARDS OF PERFORMANCE

5.1. The PDFD shall provide services to indigent clients in a manner consistent with the Rules of Professional Conduct, the Lewis County Indigent Defense Representation Plan and Indigent Defense Standards.

5.2. The PDFD shall provide an explanation and report of all public defense work for other courts during the contract period as well as report hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.

5.3. The PDFD shall obtain a minimum of seven (7) hours of criminal defense related CLE training per calendar year. The attorney is responsible for scheduling and paying for this CLE on her own. Verification of compliance with this requirement shall be provided with the attorney's December billing report.

5.4. The PDFD shall pay diligent and prompt attention to the duties of representation.

5.5. The PDFD shall not represent any person whom she has represented in her capacity as PDFD during the two years following termination of this Agreement.

5.6 The PDFD (hereinafter referred to in this section as "indemnitor") will indemnify Lewis County, its elected officials, agents, employees, and attorneys (all hereinafter collectively referred to in this section as "indemnitees") and hold indemnitees harmless against all liability for damages arising out of or relating to the services provided by indemnitor under this Agreement.

(a) Such indemnification shall not extend to nor include any liability due to the sole negligence of indemnitees or any of them.

(b) In instances in which any liability is due to the concurrent negligence of

(i) the indemnitee or the indemnitee's agents or employees, and

(ii) the indemnitor or the indemnitor's agents or employees, such indemnification only shall extend to the extent of the indemnitor's negligence, and in such regard indemnitor waives its liability immunity under industrial insurance (Title 51 of the Revised Code of Washington). Indemnitor acknowledges that this waiver has been mutually negotiated by the parties.

6. MONITORING AND EVALUATION OF ATTORNEYS

6.1 The PDFD shall meet with the Presiding Judges of the Superior and District Courts at least twice a year to review the attorney's compliance with applicable standards, including the Indigent Defense Standards, and her performance as PDFD.

6.2 These evaluations shall be in writing on a form to be developed by the Presiding Judges. These are in the nature of staff evaluations, and therefore, are not subject to public disclosure. During the PDFD's first year as PDFD, there may be quarterly reviews at the request of either the Presiding Judges or the PDFD.

6.3 The PDFD shall provide to the Superior and District Courts such reports as are required by this Agreement as well as such other reports and materials as the Presiding Judges may require upon reasonable notice in advance of the evaluation meetings.

6.4 Any plan for correction resulting from an evaluation meeting shall be in writing on a form approved by the applicable court(s).

7. TERMINATION

7.1. This Agreement shall be effective from the date stated below until January 1, 2016 and shall continue until terminated in writing by either party. Either party may terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to the other party. For purposes of giving or receiving notice of termination, the Chairman of the Board of County Commissioners shall be the representative of the County. This Agreement shall terminate immediately and automatically upon the disbarment or suspension of the PDFD. The PDFD shall immediately notify the Presiding Judges of both the Superior and the District Courts of her suspension or disbarment.

7.2 This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and Lewis County.

7.3 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such litigation shall be the courts of the State of Washington in and for the County of Lewis or the County of Thurston.

7.4 If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such validity shall not affect the other terms and conditions of this Agreement, or any application of the Agreement which can be given effect without the invalid term, condition, or application. To this extent, the terms and conditions of this Agreement are declared to be severable.

7.5 This Agreement represents the entire agreement of the parties and supersedes any and all prior oral and written statements, discussions, or understandings between the parties.

7.6 In the event that this Agreement is terminated other than at the close of a calendar month, the PDFD's final payment under this Agreement shall be the product of \$8,275.00 and the fraction of which the numerator is the number of the days the PDFD worked in the final month and the denominator is the number of days in the final month.

Dated this _____ day of November, 2014

BOCC

Chairperson

Public Defender
WSBA #40348